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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.35761 of 2024

Poonam Kumar Khaire Manohar

... Petitioner

VS.

1.Union of India

Represented by:

The Secretary Ministry of External Affairs,
South Block,
Raisina Hill,
New Delhi – 110011.

2.The Consulate General of India,

USA – Houston

4300 Scotland Street,

Houston, Texas-77007,

USA

Email :cons.houston@mea.gov.in

3.Devisree Kotteeswaran

4.The Inspector of Police

K1 Sembiam Police Station

466R+65R, Paper Mills Road,

Bunder Garden,

Perambur,

Chennai - 600011

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing Respondents No.1 and No.2



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to renew and reissue the passport of the minor girl child, Shruti Poonam bearing Passport No.M6185337 expiring on 28.01.2025 without requiring the consent of the Respondent No.3, in the light of the child's educational and emotional needs.

For Petitioner : M/s.P.R.Umamaheswari
For R1 and R2 : Mr.V.Ashokkumar
Central Government Counsel
For R4 : Mr.L.Baskaran
Government Advocate (Crl.Side)
For R3 : Mr.K.Balaji

ORDER

The Writ Petition is filed seeking a direction to the respondents 1 and 2 to renew and reissue the passport of the petitioner's minor child-Shruti Poonam bearing Passport No.M6185337 without insisting consent of the 3rd respondent, who is the mother of the child.

2. It is the case of the petitioner that he got married to 3rd respondent on 09.07.2008 and out of wedlock, a Girl Child-Shruti Poonam was born on 15.06.2009. In the year 2013, the petitioner along with the 3rd respondent and their minor child got relocated to United States in connection with his employment. Later, there were strains in the marital life between the



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petitioner and the 3rd respondent and according to the petitioner, the 3rd respondent returned to India in the year 2021 and has been residing with her parents. The petitioner's minor daughter is living with him and presently studying a 10th Grade at Allen High School, Texas, U.S.A. The Indian passport of the child is due to expire on 28.01.2025 and therefore, the petitioner applied for renewal of the passport through online. The 2nd respondent returned the application with an instruction to furnish a copy of divorce decree along with the court order for child custody or a photograph of the passport attested by both parents. When the petitioner contacted the 3rd respondent seeking her cooperation for getting renewal of passport of the child, the 3rd respondent imposed a condition that the petitioner should facilitate her return to United States.

3. It is the case of the petitioner that the condition imposed by the 3rd respondent is totally unrelated to renewal of the passport and the non-cooperation of 3rd respondent is putting the education of child in jeopardy. Having left with no other alternative remedy, the petitioner has approached this Court with the above said prayer.



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4. The learned counsel appearing for the 2nd respondent, on instructions, would submit that as per the passport manual, consent from both the parents are essential for issue as well as renewal of the passport and therefore, the 2nd respondent insisted for consent of the 3rd respondent. It is also stated by him that in case of wilful refusal to give consent by one of the parents, passport may be issued to the child, after receipt of an affidavit from the parent having custody of the child stating that other parent wilfully denied consent. It is further stated by the learned counsel that in such case, the Passport Issuing Authority should intimate the unwilling parent, regarding issue of passport to the child and for that purpose, the petitioner shall furnish the contact details of the mother of the child.

5. The learned counsel appearing for the 3rd respondent by relying on the counter affidavit filed by the 3rd respondent submitted that the 3rd respondent returned to India in the year 2021 for some purpose and also to call on her parents and thereafter, the petitioner failed to take any steps to take her back to United States and therefore, the 3rd respondent was forced to live along with her parents in India. The learned counsel also submitted that the 3rd respondent is ready to give her consent for renewal of the



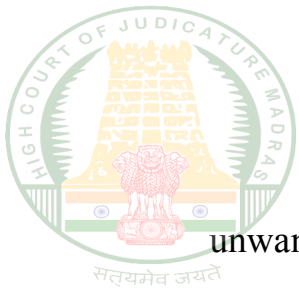
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passport on condition that the petitioner is agreeing to facilitate return of 3rd respondent to United States.

6. The learned counsel appearing for the 4th respondent filed a status report, dated 09.12.2024, wherein it is stated that the 3rd respondent preferred a criminal complaint against the petitioner in Crime No.4 of 2022 pending on the file of All Women Police Station, Peravallore. It is seen from the said status report, FIR has been registered against the petitioner under Section 498(A) of IPC and the same is pending investigation.

7. The narration of facts in the pleadings of the parties and also the status report filed by the 4th respondent would establish that the marital relationship between the petitioner and the 3rd respondent got strained and they are living apart. The Indian Passport issued to the child is due to expire on 28.01.2025. The averment in the affidavit of the petitioner that the minor child is pursuing her 10th Grade in a School in United States is not disputed by the 3rd respondent in the counter affidavit. Therefore, it is clear that the child his pursuing her studies in United States. If the passport of the child is allowed to expire without renewal, there is a danger of child acquiring

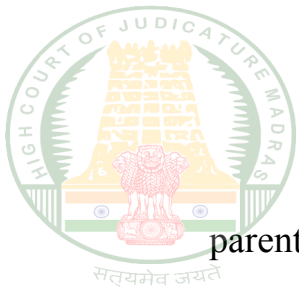


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unwanted tag of “illegal migrant” and the same will adversely affect her studies. The strained relationship between the parents shall not be allowed to affect the welfare of the minor child. It is pertinent to mention that right to education is recognized as a fundamental right of every child below the age of 14 years by Article 21-A of the Constitution of India. Further, right to education is integral part of right to life guaranteed under Article 21 of the Constitution of India. It is needless to say, a person cannot live a dignified life without proper education or atleast school education.

8. In the case on hand, the passport of the minor child is sought to be renewed by the father and non-renewal will jeopardize her education in United States. Being a minor, she is incapable of applying for renewal of the passport and signing the necessary documents. Therefore, for the purpose of renewal, the poor child is depending on her parents/guardian.

9. Merely because, the passport manual prescribed that renewal application shall be made with the consent of both the parents, the right available to the child to pursue the education and her passport renewal cannot be denied on technical grounds. In the case on hand, one of the



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parents of the child has got some reservation in giving her consent for renewal and infact, the consent is made conditional by imposing certain conditions. If the 3rd respondent wants to join the petitioner, it is always open to her to explore the remedies available to her under law. It is seen from the pleadings of the parties, both the petitioner and 3rd respondent got separated in the year 2021 and no legal steps have been taken by the 3rd respondent to join the petitioner.

10. Infact, the 3rd respondent preferred a complaint against the petitioner before the 4th respondent and criminal case is pending investigation. When the 3rd respondent has got legal remedy to explore the possibility of joining the petitioner, it is not open to her to impose a condition that unless petitioner facilitate her return to United States, she cannot give her consent for renewal of the passport.

11. In any event, this Court is of the firm view that the strained relationship between the petitioner and 3rd respondent shall not come in the way of their minor child pursuing her education. In the cases like this, the welfare of the child shall be paramount consideration. This Court is not in a



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position to go into the question whether pursuing education in United States

under the custody of the petitioner is in the best interest of the child or not.

Infact, in this writ petition, this Court cannot go into that question.

However, misunderstanding between the parents shall not affect or interrupt

the education of the child. The question, who is entitled to custody of the

child and what is good for the future of the child etc., can be decided by the

Competent Court in appropriate proceedings. However, in no case, the

education of the child shall get jeopardized. The minor child is aged about

15 years and the legal guardianship vests with the petitioner and in the

absence of any order of the court of competent jurisdiction depriving the

petitioner of his custody over the child, I do not think the Official

Respondents can refuse renewal of passport on technical consideration that

one of the parent has not given her consent for renewal of the passport.

12. In view of the discussion made earlier, the petitioner is directed to represent the returned passport application and the respondents 1 and 2 are directed to process the application for renewal of passport of the minor child-Shruti Poonam in Passport No.M6185337 and pass necessary orders for reissue of passport, without insisting consent from the 3rd respondent, if



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the petitioner is able to fulfil other legal formalities. The final order on the application for renewal of the passport shall be passed on or before 27.01.2025. It is made clear that any observation made in this writ petition will not affect the rights of the petitioner as well as 3rd respondent in the matrimonial proceedings or any proceedings initiated regarding custody of the child.

13. With the above direction and observation, the Writ Petition stands disposed of. No costs.

10.01.2025

Index : Yes
Speaking order : Yes
Neutral Citation : Yes
dm

Note: Issue order copy today.

To

- 1.The Secretary Ministry of External Affairs,,
Union of India, South Block,
Raisina Hill, New Delhi – 110011.
- 2.The Consulate General of India,
USA – Houston, 4300 Scotland Street,
Houston, Texas-77007, USA
Email :cons.houston@mea.gov.in
- 3.The Inspector of Police, K1 Sembiam Police Station,
466R+65R, Paper Mills Road, Bunder Garden,
Perambur, Chennai – 600011.



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S.SOUNTHAR, J.

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